IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1437 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DEPUTY EXECUTIVE ENGINEER

Versus

RUPABHAI GALABHAI

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Appearance:

1. Special Civil Application No. 1437 of 1992

MR DD VYAS for Petitioner No. 1

MRS DT SHAH for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/08/2004

ORAL JUDGEMENT

Heard learned Sr. Advocate Mr. D.D. Vyas for the petitioner and Mrs. D.T.Shah for the respondent

workman. In this petition, the petitioner is challenging the award made by the labour court, Surat in Reference No. 899 of 1989 dated 12th November, 1991. Under the said award, the labour court has ordered for reinstatement of the respondent with continuity of service with 70 per cent of the back wages for the intervening period. While admitting the petition by issuing rule thereon, this court has granted ad.interim relief subject to the provisions of section 17B of the ID Act, 1947 on 5th March, 1992. Thereafter, on 20th April, 1992, this court passed further order as under:

> "Heard Ms. D.T.Shah, Advocate appearing for the petitioner in CA No. 732/92 and Mr. D.D.Vyas, Advocate for the petitioner in present Special Civil Application, as regards the interim relief. Interim relief as regards stay of the direction regarding reinstatement is reused. As regards the amount of back wages is concerned, it is directed that the 50 % of the amount directed to be paid shall be deposited in the labour court concerned on or before May 31, 1992. In case the amount is not deposited on or before May 31, 1992, the amount shall carry interest at the rate of 15% from the date of this order till the amount is deposited with the labour court. The petitioner may retain balance of the 50 % of the amount with him on condition that if the petitioner fails in the petition, it shall pay the amount to the workman with 15% interest.

Learned Sr. Advocate Mr. Vyas submits that in view of the said order, amount of 50 per cent back wages has been deposited by the petitioner before the labour court concerned. He also submits that these respondent workmen were appointed in January, 1986 and their services were removed in February, 1987 and, thus, one year service was rendered by the respondent workmen. He also submitted that the respondents were working on the road at Limdi to Shiyani as a casual workmen and normally, such casual workmen are engaged from the nearby place of work. According to him, list of such workmen is not actually a list of seniority of such workmen but it can be considered to be the list of the workmen engaged by the petitioner who are working on the road which has also been handed over to the State Government and, therefore, order of reinstatement is also bad in law. He also submitted that the other persons who were continued were subsequently appointed on different place and different work and, therefore, because of their continuation, it cannot be held that the petitioner has

committed breach of the provisions of section 25-G, 25-H etc. He also submitted that the relevant orders were produced by the petitioner before the labour court but the same were not considered properly by the labour court while making the impugned award and, therefore, the labour court has committed gross error in making the award of reinstatement with 70 per cent of the back wages for the intervening period. Save and except these submissions, no other submissions were made by the learned Sr. Advocate Mr. Vyas before this Court.

On the other hand, learned advocate Mrs. D.T. Shah appearing for the respondents workmen has supported the award and has submitted that the petition is required to be dismissed.

In view of the interim order wherein stay against reinstatement was refused, the workmen have been reinstated in service.

I have considered the submissions made by the learned advocates for the parties. Before the labour court, statement of claim was filed by the workmen that they were working with the petitioner on Shiyani Tapi Road from January, 1986 to December 1987; the opponent has relieved them on 23.2.1987 without any fault; they have completed 240 days continuous service in 1986-87 and yet their services have been terminated without complying with the provisions of section 25-F of the ID Act, 1947. Written statement was filed by the petitioner at Exh. 6 before the labour court. It was contended by the petitioner that earlier, three references were made which were rejected by the Labour Court, Rajkot by order dated 27th October, 1986 and, therefore, principle of res judicata would apply. It was also contended that the work of the road from Limdi Shiyani was taken over by the State Government and, therefore, the petitioner has not been able to give work to the respondents and, therefore, their services were terminated by the petitioner. Before the labour court, seniority list was produced at Exh. 8. Petitioner produced termination order vide Exh. 11 dated 20th February, 1987. Before the labour court, one workman Rupabhai Galabhai was examined at Exh. 10 who deposed that they were in service from January, 1986 to February, 1987 continuously; they were at Sr. No. 22, 27 and 33 in the seniority list. He also deposed that the workmen junior to him were continued in service and after his termination, he was not able to get any work elsewhere. In his cross examination, it was made clear that the earlier reference which were rejected by the Labour Court, Rajkot were relating to the termination of

the year 1982 and not relating to the present termination. On behalf of the petitioner, vide Exh. 14, its Deputy Executive Engineer Mr. Shah was examined and he deposed before the labour court that he was working in the R & B Sub Division of the District Panchayat and since last two months, he was working on the road and the workmen were working as per the record on Limdi Shiyani Road. It was stated by him in his examination in chief that new workmen are not working. In his cross examination, it was deposed by him that he had not seen the muster roll or the salary statement of the workmen but has deposed on the basis of the statement of claim that the workmen were working on Limdi Shiyani Road; he has not seen any documents except the statement of claim; he has no idea as to whether the new workmen are working or not; he has no any other knowledge save and except the statements made in the written statement.

Thereafter, written arguments were submitted by the parties before the labour court and ultimately the labour court examined the merits of the matter and has then come to the conclusion that the workmen were in service of the petitioner from January, 1986 to February, 1987 continuously without break and, therefore, they have completed 240 days continuous service; their services were terminated by the petitioner without complying with the mandate of section 25-F of the ID Act, 1947. The Labour Court also considered the oral evidence of the Road Clerk Shri Naginndas Nandlal Bhalani Exh. 23. In his cross examination, it was deposed by him that since eight years, he is working as a Road Clerk; he has no knowledge of the case filed by the workmen in the labour court in 1984; order of termination of the workmen is bearing the signature of the Deputy Executive Engineer and the workmen; applicants were working on Limdi Shiyani Road; except that, they have not worked on any other road; said road has been handed over to the State; on the said road, new workmen have not been engaged; all those who are working are old. In his cross examination, it was stated by him that the names of the workmen are at Sr. No. 22, 27 and 33 in the seniority list. Workman Gagji Uka who is at Sr. No. 34 in the said seniority list and thereafter, other workmen upto Sr. No. 126 of the same seniority list are presently working; work is going on in the Limdi Sub Division. This deposition of the road clerk was taken into consideration by the labour court. Before the labour court, it was not contended by the petitioner that the workmen were not in continuous service of 240 days. Seniority number of the workmen was also not disputed by the petitioner before the labour court. The labour court considered all these aspects.

No gainful employment of the workmen was proved by the petitioner before the labour court. On the other hand, it was the case of the workmen before the labour court that though efforts were made by them, they were not able to secure any gainful employment. Therefore, considering all these aspects, the labour court made award of reinstatement with 70 per cent back wages for the intervening period. Before the labour court, no evidence was produced to show that the work of the road in question was handed over to the State.

After perusal of the award as a whole and considering the reasons given by the labour court and the discussion given by the labour court in support of the award in question, according to my opinion, the labour court has rightly appreciated the oral and documentary evidence on record and has rightly come to the conclusion that the question of res judicata is not applicable since the earlier references were relating to the termination of the year 1982 and not of 1987. According to my opinion, once the labour court has appreciated the evidence and has given the findings based on such evidence, this court would, ordinarily not reappreciate the same as an appellate authority in exercise of the powers under Article 227 of the Constitution of India. The labour court has given sufficient reasons for setting aside the order of termination of the present workmen. There is no dispute about the completion of 240 days continuous service and there is also no dispute about the non compliance of the mandate of section 25-F of the ID Act, 1947 and, therefore, according to my opinion, the labour court has not committed any error apparent on the face of the record. Learned advocate Mr. Vyas appearing for the petitioner has not been able to point out any material illegality and/or irregularity committed by the labour court. He was also not able to point out any infirmity in the findings recorded by the labour court. Therefore, this Court is not inclined to interfere with such findings of fact recorded by the labour court, in exercise of the powers under Article 227 of the Constitution of India. Hence there is no substance in this petition. Therefore, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

It is directed to the labour court concerned to pay the amount to each of the concerned respondents workmen (reference workmen) from the amount deposited by the petitioner. For the rest of the amount, it will be open for the respondent workmen to file appropriate proceedings before the appropriate forum for recovery of

the remaining amount of back wages.

(H.K. Rathod,J.)

Vyas